as frequently laid down, are opposed to the weight of modern authority, and by thus preventing a trespasser from relying on the statute of limitations are destroying an important effect of the statute.

BILLS AND NOTES—AGREEMENT TO RENEW.—The plaintiff orally agreed with the defendant's agent some time before the defendant's note came due to renew it at maturity for four months, upon payment of interest then due and $250. Prior to the maturity of the note the defendant's agent tendered the new note, the interest, and $250, which the plaintiff refused. He then brought an action on the original note. The defendant pleaded that the action was prematurely brought as the period had not expired for which the note sued upon was to be renewed. *Held,* that the plaintiff should recover, with a *dictum* that the defendant might have redress in another action on the breach of contract to renew. *West v. Jones* (1919, Del.) 108 Atl. 675.

The decision is in accord with the general (though inadequate) rule that though a contract to forbear for a definite time to sue upon a contract is itself a valid contract, if supported by a consideration, the contract to forbear cannot be pleaded in bar to an action brought on the original contract, although the time of forbearance has not elapsed. *Bridge v. Tierman* (1865) 36 Mo. 439; *Brown v. Shelby* (1891) 4 Ind. App. 477, 31 N. E. 89; see Daniel, *Negotiable Instruments* (6th ed. 1913) secs. 158, 159. The cases agree with the principal case in following the doctrine of *Ford v. Beech* (1847) 11 Q. B. 852. But in that case the agreement to renew was made after maturity, whereas in the principal case it was made prior to maturity. For the effect of the parol evidence rule where the agreement is contemporaneous with the note, see (1919) 28 YALE LAW JOURNAL, 823. It is conceivable that the breach of such an agreement might cause irreparable damage, as where the maker of the note, relying on the agreement, might not make arrangements to meet it, and become financially embarrassed. Where the legal remedy is inadequate, executory accords have been enforced in equity, if tender has been made. See (1920) 29 *ibid.,* 114. It has been suggested that an accord like the one in the principal case might be sustained as an equitable defence, giving to the defendant an irrevocable power to extinguish his former duty by tender. See Corbin, *Discharge of Contracts* (1913) 22 YALE LAW JOURNAL, 513, 529; see Wald, *Pollock on Contracts* (Williston's ed. 1906) 833; *cf. Innes v. Munro* (1847) 1 Exch. 473. Nevertheless there seems to be no case which so holds. Such an agreement does operate, however, to release a surety on the original note. *Bank v. Woodward* (1829) 5 N. H. 99; *Windhorst v. Bergendahl* (1907) 21 S. D. 218, 111 N. W. 544. This would tend to indicate that the payee's right arising from the note should be suspended until the time agreed upon had expired. It seems clear that to allow the equitable defence would avoid circuity of action.

CARRIERS—TORTS OF SERVANTS—CONTRACTUAL DUTY TO CARRY SAFELY.—The plaintiffs employed the defendant, a private carrier, to convey their goods, which the defendant's driver stole. The defendant had not been guilty of any negligence in selecting the driver. *Held,* that the plaintiff should not recover, because the defendant had not held out the driver as one having authority to do the act which caused the loss. *Mintz v. Silverton* (1920, K. B.) 36 Times L. R. 399.

Manifestly in the instant case in tortiously converting the goods, the driver of the defendant was not acting within the scope of his employment, and the maxim *respondeat superior* does not apply. *Cf. Cheshire v. Bailey* (1904, C. A.) 21 Times L. R. 130. In the United States, also, the defendant is not responsible for the driver's tort on this theory. *Cf. Vandeymark v. Corbett* (1909) 131 App. Div. 391, 115 N. Y. Supp. 911. The defendant, however, having lawfully acquired possession of the plaintiff's goods as bailee for hire, was under a duty

to exercise reasonable care to protect them. See Dobie, *Bailments and Carriers* (1914) 154, note 92. He could delegate the performance of his contractual duty of carriage to a servant; but as bailee he was still under a common-law duty to accomplish their safe carriage. See VanZile, *Bailments and Carriers* (2d ed. 1908) 111. So it would seem that American courts would hold that he was under a contractual duty to deliver the plaintiff's goods at the agreed place, the performance of which was not excused by the driver's conversion of the goods while transporting them. See *Hasbrouck v. New York Central & H. R. R.* (1911) 202 N. Y. 363, 374, 95 N. E. 808, 812. The Wisconsin court in a famous case, where the conductor of a railroad kissed an unwilling female passenger, imposed a similar duty upon the carrier to protect its passengers from the insults of its servants. *Craker v. Chicago & Northwestern Ry.* (1875) 36 Wis. 657. Commenting on this case, a learned English author said that such a decision was in effect to hold that the master warranted the moral impeccability of his servants. See Beven, *Negligence* (3d ed. 1908) vii. This clearly indicates the English viewpoint and its refusal to recognize the master's duties in this regard. The instant case is in accord with the majority of the English adjudications, but it seems that few American courts would follow it. For a discussion of a master's criminal responsibility for the acts of his servant, see (1919) 28 YALE LAW JOURNAL, 700.

CONSTITUTIONAL LAW—ADMIRALTY—STATE WORKMEN'S COMPENSATION ACTS NOT MADE APPLICABLE TO ADMIRALTY BY ACT OF OCTOBER 6, 1917.—The plaintiff, whose husband was drowned in the Hudson river on August 3, 1918, while doing work of a maritime nature, had obtained an award of compensation for herself and minor children under New York law. *Held,* that the award was invalid since the Act of Congress of Oct. 6, 1917, ch. 97, 40 Stat. L. 395, saving from the grant of admiralty jurisdiction to the federal courts by the Judiciary Act "to claimants the rights and remedies under the Workmen's Compensation Law of any State," violates the grant of admiralty jurisdiction to the federal courts by article 3, section 2 of the federal Constitution. Holmes, Pitney, Brandeis and Clarke, JJ., *dissenting. Knickerbocker Ice Co. v. Stewart* (May 17, 1920) U. S. Sup. Ct. Oct. Term 1919, No. 543.

This decision reverses (1919) 226 N. Y. 302, 123 N. E. 382 and overrules *The Steamship Howell* (1919, S. D. N. Y.) 257 Fed. 578, (1919) 28 YALE LAW JOURNAL, 835 and approves *Rhode v. Grant Smith Pater Co.* (1919, D. Ore.) 259 Fed. 304. As already indicated in the JOURNAL, the decision logically follows from *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524, (1917) 27 YALE LAW JOURNAL, 255, 269, 924, where by the same division of the Court as in the instant case state workmen's compensation laws were held unconstitutional when applied to maritime torts. See also (1918) 28 YALE LAW JOURNAL, 251; *cf.* (1920) 29 *ibid.,* 362. Though the Act here in question was passed to avoid the effect of that decision the objections raised by the majority could not be removed by Congress. The decision itself was not unexpected but it does accentuate the unfortunate results of the earlier decision. Justice Holmes argues that Congress has by this Act made the state laws federal, citing *Clark Distilling Co. v. Western Md. Ry.* (1917) 242 U. S. 311, 37 Sup. Ct. 180, (1917) 26 YALE LAW JOURNAL, 399, sustaining the act of Congress which prohibited the shipment of intoxicating liquor from one state into another when intended for use contrary to the latter's law. The majority answer distinguished that case on the ground that the constraint, i e., the will causing the prohibition came from Congress, and reassert the doctrine that the legislative power of Congress cannot be delegated to the states.